115—116

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 312.

B. F. GOOD, C. R. CLARK, J. E. WHISTLER, D. MURPHY, ET AL., PLAINTIFFS IN ERROR,

vs.

M. J. O'CONNOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED OCTOBER 7, 1882.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 & 2 *Transcript.*

In the Supreme Court of the State of California.

M. J. O'CONNOR, Plaintiff and Respondent,
against
B. F. GOOD *et al.*, Defendants and Appellants. } No. 7966.

Transcript on Appeal.

Will. D. Gould and James H. Blanchard, attorneys for defendants and appellants; J. D. Bicknell, attorney for plaintiff and respondent.

3 *Complaint in Ejectment.*

In the District Court of the Seventeenth Judicial District of the State of California in and for the County of Los Angeles.

M. J. O'CONNOR, Plaintiff,
vs.
B. F. GOOD, C. R. CLARK, J. E. WHISTLER, D. MURPHY, J. MCCLURE, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S. Gaines, E. Davis, J. R. Hinkle, G. Z. Morey, C. Davis, J. H. Bland, H. Khuhn, A. W. Eames, S. E. Watson, J. C. Tucker, H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Farris, T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slotterbeck, J. Officialdeguy, V. Fridolin, Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, S. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lille F. Burlingame, H. S. Dickey, Jose Antonio Rodriguez, Dolores Rodriguez, Jean Lagier, T. M. Weed, E. Bein, Denis McCauley, Defendants.

4 The plaintiff above named, by this his amended complaint, complaining of defendants above named for cause of action alleges:

That on the 10th day of April, 1876, the said plaintiff was the owner and seized in fee and possessed and entitled to the possession of all that certain lot of land situate in the county of Los Angeles, State of California, and described as follows, to wit: S. ½ sec. 26, all of sec. 35, W. ½ sec. 36, all in t'w'p 2 S., R. 14 W., S. B. M.; all of sections 1, 2, 3, 10, 11, 12, 13, 22, 23, 24, N. ½ sec. 13, N. ½ sec. 14, S. W. ¼ sec. 14, lots 1, 2, and 3 in sec. 26, S. E. ¼ of N. E. ¼ of sec. 27, all in T. 3 S., R. 14 W., S. B. M.; all of sections 18, 19, N. W. ¼ sec. 17, N. ½ S. W. ¼ sec. 17, and S. W. ¼ of S. W. ¼ sec. 17, all in T. 3 S., R. 13 W., S. B. M.

That while the plaintiff was such owner, and so seized and possessed, and entitled to the possession, of all said land and premises the said defendants did, on the day and year aforesaid, wrongfully and unlawfully, and without right of title, enter into and upon the same, and oust and eject the plaintiff therefrom, and ever since that day

wrongfully and unlawfully have withheld, and still and now wrongfully and unlawfully do withhold, the possession thereof from
5 the plaintiff, to his wrong, injury, and damage in the sum of five thousand dollars.

That the value of the rents and profits of said land and premises is three thousand dollars per year, and that, by reason of the unlawful withholding of the said land by the defendants as aforesaid, plaintiff has been deprived, and, by the continuance thereof, will be deprived of the use and occupation of the same, to his loss and damage in the sum of three thousand dollars.

Wherefore the plaintiff prays judgment against the said defendants for the restitution of said land and premises, and for the sum of five thousand dollars damages for the withholding thereof, and three thousand dollars damages caused by the loss of the value of the rents and profits thereof, together with his costs of suit.

JOHN D. BICKNELL,
Attorney for Plaintiff.

Filed November 21st, 1876.

A. W. POTTS, *Clerk.*

6 *Separate Answer of E. Root.*

In the Superior Court of Los Angeles County, State of California.

M. J. O'CONNOR, Plaintiff, *against* B. F. GOOD *et al.*, Defendants.

Now comes E. Root, one of the defendants in the above-entitled cause, leave of the court having been first obtained, and demanding for himself a separate trial, and, as his own separate answer to the plaintiff's complaint therein, denies:

1. That on the 10th day of April, 1876, or at any other time before or since said date, the plaintiff was the owner or was seized in fee, or possessed, or entitled to the possession of the tract of land in said complaint described, or any part thereof.

2. That he, on said 10th day of April, or at any other time, wrongfully or unlawfully, or without right or title, entered into or upon said land and premises, or any part thereof, or ousted or ejected the plaintiff therefrom, or that he has since said 10th day of April, or any date, or at all, wrongfully or unlawfully withheld, or still
7 or now wrongfully withholds possession of said land, or any part thereof, from the plaintiff, or that by reason of any act or acts of defendant the plaintiff hath suffered wrong or injury or damage in the sum of $5,000, or in any other sum whatever.

3. That the value of the rents and profits of said land and premises is the sum of $3,000 per year, or that by reason of any act or acts of this defendant, or that by reason of unlawful withholding of said land or any part thereof, the plaintiff has been deprived, or will be deprived, of the use or occupation of the same to his loss or damage in the sum of $3,000 or any other sum.

4. And the defendant denies each and every allegation in said complaint contained.

Further answering, the defendant alleges that he has not now, nor

ever did have, any interest in or possession of any portion of the land and premises in plaintiff's complaint described, other than the southwest quarter of section 15, township 3 south, range 14 west, of San Bernardino base and meridian, and as to such land his possession of the same is valid.

And said defendant, for a further and separate answer and defense to the plaintiff's complaint, alleges:

8 1. That said land and premises last hereinbefore particularly and in said complaint described, and the whole thereof, at the time said defendant entered and settled upon the particular tract or portion and now possessed, occupied, claimed, and owned by him, as hereinafter mentioned and set forth, was unoccupied, uncultivated, unimproved, and vacant public domain of the United States, and that said land for more than ninety days prior to the date on which said defendant settled thereon, and prior to said 10th day of April, A. D. 1876, was duly surveyed by the United States authorities as public land, and the township plat, including said land, filed in the U. S. district land office at Los Angeles, California, in which district said land is situate, and said land was subject to the operations of the general laws of the United States pertaining to the disposition and possession and purchase of her public lands, and was, at and long prior to the time of the alleged entry and ouster complained of, subject to pre-emption settlement under the pre-emption laws of the United States, and that ever since the time of his said settlement he has held lawful possession, and now has the lawful right of possession of the said land by him possessed as hereinafter set forth.

2. That heretofore, to wit, on or about the 13th day of June, 1876, the defendant, under and by virtue of the pre-emption

9 laws of the United States, and for the purpose and with the intention of availing himself of the provisions of said pre-emption laws, entered and settled upon the land claimed by him, the same being a part of the tract of land in plaintiff's complaint described, to wit, the southwest quarter of section 15, township 3 south, range 14 west, of San Bernardino base and meridian, and erected a dwelling-house and made other valuable improvements upon the said land by him so settled upon and claimed, as above set forth and described, and has ever since resided upon and cultivated the same, claiming and holding it as a pre-emptor under the laws of the United States, and still and now so claims and holds the same.

3. That the defendant is and was, at the time he settled, as hereinbefore mentioned, a citizen of the United States, and the head of a family, over the age of twenty-one years, and has never had the benefit of the pre-emption laws in any of the States or Territories of the United States, and did not quit or abandon his residence on his own land in said State to settle upon the public lands in said State, or said land described, and was not then, and is not now, the owner of 320 acres of land in any of the States or Territories of the United States; and said defendant was, at said date of his settlement, as aforesaid, a duly qualified pre-emption settler, and

10 that he did not settle upon said land for the purpose of ac-

quiring title thereto for any person other than himself, and neither has, directly or indirectly, made any agreement or contract with any person or persons whatever, whereby the title which he might acquire from the United States would inure in whole or in part to the benefit of any person or persons other than himself, and his said settlement was not made for the purpose of speculation, but in good faith, and with the view to making said premises a home.

4. That said land is agricultural land, and not mineral land, and the same has not yet been proclaimed for sale.

5. That said defendant claims, as aforesaid, 160 acres of land only, and that said defendant thus claiming said land has fully complied with the pre-emption laws of the United States in every particular; that said defendant has, since his said entry upon said land, made known his claim in writing to the register of the proper land office within the time prescribed by law, and has filed, or ordered to file, in the U. S. district land office in Los Angeles, California, in which district the lands are situated, his declaratory statement in due form, and within the time prescribed by the United States pre-emption laws, for the said land claimed by him,
11 and has paid to the register and receiver of said office the fees required therefor; and thereafter said defendant, having fully complied with the said pre-emption laws, duly made proof before said register and receiver of his settlement, residence upon, and improvements of said land, and his qualifications as a pre-emptor, and all proof required to be made in such cases, and tendered to them the Government price for said land, and all fees in full, and has, in all respects, complied with the requirements of said pre-emption laws so far as he has been permitted to do so by said land officers, and that his said application to enter said land and tender proof and payment, etc., is now pending before the Land Department of the United States.

And by virtue of the full compliance with all the requirements of the pre-emption laws of the United States by defendant, as aforesaid, the defendant has acquired title to the said tract claimed by him, and a vested interest therein from the Government of the United States, and is the owner of the same, and is entitled to a patent from the United States for the said tract of land so claimed and owned by him. And defendant further alleges that, claiming said land as above in good faith, he placed thereon lasting and valuable improvements, which greatly exceed in value the rents and profits of said premises.

12 And for a further and separate answer and defense to the complaint of the plaintiff herein, the defendant alleges:

1. That the lands and premises by the plaintiff described, and herein particularly described, and the whole thereof, were at all times from the year 1837 until the 21st day of November, A. D. 1871, within the claimed and exterior limits of a valid Mexican grant, to wit, the Rancho Sausal Redondo, and were, at all times, between the dates last aforesaid, claimed by the grantees of said rancho and their assigns as a part of said grant, and were thus reserved from other

appropriation, and were not subject to selection by the State of California, as indemnity school lands or otherwise, between said dates.

2. That plaintiff claims title to and right of possession and recovery of said land, and in no other way than by reason of a patent of the State of California, issued by the Governor of said State, in satisfaction and by reason of pretended insufficient and fraudulent applications, illegally made for said land, on or about the 6th day of March, A. D. 1868; that said applications were thus made and accepted by the State locating agent prior to the survey of said land, and while said Rancho Sausal Redondo was still unsurveyed; that
13 all of said land was applied for as aforesaid, and the applications were made in the interest and for the benefit of one W. S. Rosecrans, through whom plaintiff claims title, and said applications to purchase were pretended to have been made to the State of California, under the provisions of an act entitled "An act to provide for the sale of certain lands belonging to the State," approved April 27, 1863, but were in fact collusive and fraudulent, and in violation of said law and the limitations thereof, which then did forbid, and have ever forbidden, the location of more that 320 acres of land, either directly or indirectly, for any one person, and were a part of a large class of like applications thus fraudulently made.

3. That said applications, approved as aforesaid, were the basis of pretended indemnity school land selections and locations by the State locating agent for the lands claimed and now owned by defendant, which selections and locations were illegal and void, and conferred no title upon said Rosecrans, or upon the plaintiff, or any other person or persons whomsoever, by reason of the facts herein set forth.

4. That in satisfaction of said pretended illegal and fraudulent applications and selections and locations the Commissioners of the General Land Office of the United States, claiming to be act-
14 ing under the provisions of the act of Congress of March 3, 1853, and the sixth section of the act of Congress of July 23d, 1866, amendatory thereof, erroneously, illegally, and without authority, as defendant believes, fraudulently listed and certified said land to the State of California, which list was erroneously and illegally, as he believes, fraudulently approved by the Secretary of the Interior.

5. That said pretended locations and selections in the name of the State, or by the State of California, of said land in 1868 were illegal and void, and the act of Congress of March 3d, 1853, or any amendment thereof, gave no force or effect to said locations or selections, and the approval of the list of said lands, as aforesaid, conveyed no right, title, claim, or interest therein to the State.

6. That the act of the Commissioners of the United States General Land Office in certifying or listing said land to the State of California was without authority, irregular, illegal, and ineffectual to vest in said State any right, title, claim, or interest therein or thereto.

7. That the plaintiff never had possession of the land claimed by the defendant, as aforesaid, and in said complaint described, nor any part thereof, nor ever had any improvements thereon.

15 And for a further and separate answer and defense to the complaint of the plaintiff herein, the said defendant alleges:

1. That said applications, locations, and selections of the lands in dispute, as aforesaid, and the plaintiff's claim of title thereto, are illegal and void, inasmuch as said applications, locations, or selections were made in lieu of certain 16th and 36th sections, which were at the date of said applications and locations, and still are, unsurveyed lands of the United States, within townships the plats of which have never been filed in the United States land office of the district in which said lands are situated; nor have the township lines thereof been extended over said lands; nor had the same been determined to be within the limits of any Spanish or Mexican grant by any final survey of such grant determined and approved at the time of said applications and locations and said proceedings thereunder; nor were said 16th and 36th sections, or any part thereof, otherwise or in any way ascertained to be lost to the State of California, and that the U. S. surveyor general for the State of California never furnished the State locating agent, or any of the State authorities, with a list or lists of said 16th and 36th sections, or any part thereof, in any way, as a basis of selection or location, or at all, or in any way certified that the same were so covered or in any way lost to the State.

16 2. That plaintiff's claim of title to said land, and said patents from the State of California, are null and void, and were obtained and made with full notice and knowledge of the fraudulent acts, and all the acts and facts hereinbefore set forth.

And for a further and separate answer and defense to the plaintiffs complaint, the said defendant alleges—

1. That the plaintiff has no right, title, or interest in said land, provided the title ever passed from the United States to the State of California.

2. That provided the State of California ever acquired title to said land, the title thereto is still vested in said State.

3. That said defendant, not waiving his pre-emption claim to said land, has duly applied to the State of California to purchase any and all claim, right, title, and interest of the State in and to said land, which application is now pending and undetermined; and that the defendant is a duly qualified purchaser of said land from the State.

Wherefore the said defendant prays for judgment against the said platntiff, and for costs of suit.

WILL. D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendant.

17 STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

E. Root, being first duly sworn, deposes and says: That he has heard read the foregoing answer, and knows the contents thereof, and that the same is true of his own knowledge, except to things

therein stated on his information and belief, and as to those matters he believes it to be true.

E. ROOT.

Subscribed and sworn to before me, this 19th day of January, 1880.

A. W. POTTS, *Clerk*,
By D. M. ADAMS, *Deputy*.

Received copy of the foregoing answer, this 27th day of January, 1880.

J. D. BICKNELL,
Attorney for Plaintiff.

Filed January 29, 1880.

A. W. POTTS, *Clerk*.

Each of the seperate answers of the defendants, James Root, Jean Lagier, J. A. Rodriguez, D. Rodriguez, and E. Bien, are identical in form and substance, allegation for allegation, and contain like denials as the foregoing seperate answer of E. Root, except that they
18 and each of them claim other land, etc., as expressed in the following table, to wit:

Names of defendants.	Description of land.	Date of settlement.
James Root	N. E. ¼ Sec. 11, T. 3 S., R. 14 W., S. B. M.	June 14, 1876.
Jean Lagier	Lots 1, 2, 3, and 4, Sec. 24, T. 3 S., R. 14 W., S. B. M.	April, 1876.
J. A. Rodriguez	N. W. ¼ Sec. 24, T. 3 S., R. 14 W., S. B. M.	April, 1876.
D. Rodriquez	N. E. ¼ Sec. 24, T. 3 S., R. 14 W., S. B. M.	April, 1876.
E. Bien	N. E. ¼ of N. W. ¼ and lots 3, 4, and 5, Sec. 19, T. 3 S., R. 13 W., S. B. M.	June 27, 1876.

And each of said answers are to be considered on appeal with the same force and effect as if herein set out in full, as per stipulation on last page of this transcript.

Findings as to the Defendant E. Root.

Title of Court and Cause.

In the above-entitled cause the court finds from the evidence the following facts upon the issues made by the pleadings as to the defendant:

I.

That township 3 south, range 14 west, S. B. M., was surveyed by authority of the United States in the month of February, 1868, and the township plat filed in the U. S. land office April 22d, 1868, and said lands were thereafter listed to the State of California by lists in

usual form, certified by the Commissioner of the General
19 Land Office under date of November 23d, 1871, and by the Secretary of the Interior under date of November 24, 1871, and said lists were thereupon filed and are now records of the U. S. land office.

II.

The State of California conveyed said lands by patent to W. S. Rosecrans under date of April 21st, 1874, and the plaintiff in this action had by mesne conveyances acquired the title of said lands before the commencement of this action, and still holds the same.

III.

That plaintiff and his grantors had been in possession of said land from 1872 until the time of the entry of the defendant thereon, renting the same to various parties, who used said land for grazing purposes and herding sheep thereon.

IV.

That the defendant entered upon said land at the dates hereinafter mentioned, claiming the same as a pre-emptor under the pre-emption laws of the United States, and erected a dwelling-house and made other improvements thereon, and has resided thereon until the present time, and possesses all the necessary qualifications to entitle them to pre-empt lands under the laws of the United States.

V.

20 The defendant, E. Root, entered upon said land on the 13th day of June, A. D. 1876, claiming the same under the pre-emption laws of the United States.

VI.

That within the time prescribed by law, after his entry upon said land, the defendant offered to file his declaratory statement in the United States land office, which offer was refused, and the defendant appealed to the Commissioner of the General Land Office from the order of the register of the land office refusing said filing, and said action has been, by the Commissioner, affirmed, and the same is now pending and undetermined before the Secretary of the Interior on appeal.

VII.

That subsequent thereto, and within the time prescribed by law, said defendant tendered to the officers of the United States land office his final proofs, as required by law, and full payment of the Government price of said land, together with all legal fees therefor; all of which was refused by said officers, and each of the defendants duly appealed to the Commissioner of the General Land Office from said refusal, and the same is now pending in the Land Department.

VIII.

That said defendant offered to file his declaratory statement
21 in the U. S. land office on June 13th, 1876, and tendered his final proof and payment to the officers of the land office June 20th, 1877.

IX.

That the value of the improvements placed on said land by defendant is equal in value to the rents and profits thereof while such defendant has withheld the same from the plaintiff.

X.

That all the allegations in defendant's answer, except as hereinbefore found, are untrue.

XI.

That the plaintiff was, at the time of the filing of the complaint herein, and still is, the owner in fee of the land described in his complaint, and claimed by said defendant, and at all times since the filing of the complaint has been, and still is, entitled to the possession of said land, as against each and all the defendants above named.

As a conclusion of law, from the foregoing, the court orders that judgment be entered in favor of the plaintiff and against said defendant for the possession of the land described in the defendant's answer, and for costs.

J. D. HINES,
Superior Judge, Presiding.

Filed May 14, 1881.

A. W. POTTS, *Clerk.*
By A. RIMPAU, *Deputy.*

22 *Judgment by the Court as to the Defendant, E. Root.*

Title of Court and Cause.

This cause comes on regularly for trial on the 11th day of May, 1881, John D. Bicknell, Esq., appearing as counsel for the plaintiff, and Gould & Blanchard, Esqs., for the defendant. A trial by a jury having been expressly waived by the respective parties, the cause was tried before the court sitting without a jury; whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined and documentary evidence introduced by both parties. The evidence being closed, the cause was submitted to the court for consideration and decision, and after due deliberation thereon, the court files findings of fact, and orders that judgment be entered herein in favor of the plaintiff and against the defendant, E. Root, for the possession of the land described in his answer, and for costs.

Wherefore, by reason of the law and findings aforesaid, it is ordered, adjudged, and decreed that M. J. O'Connor, the plaintiff, do have and recover of and from E. Root, the defendant, the south-

west quarter (S. W. ¼) of section No. fifteen (15), township No. three (3) south, range No. fourteen (14) west, S. B. M., together
23 with said plaintiff's costs and disbursements incurred in this action, amounting to the sum of seventeen and $\frac{3}{100}$ ($17.03) dollars.

J. D. HINES,
Superior Judge, Presiding.

Judgment recorded.
Filed May 14, 1881.

A. W. POTTS, *Clerk.*
By A. RIMPAU, *Deputy.*

The findings and judgment as to the defendants, James Root, Jean Lagier, J. A. Rodriguez, D. Rodriguez, and E. Bien, are the same as the foregoing findings and judgment as to E. Root, except as to the land claimed by each respectively, &c., as set forth in their separate answers and in the summary thereof herein on folio 46, page 30. And the same and each and all of them are to be considered on appeal, and to have the same force and effect as if herein set out in full, as per stipulation on last page of this transcript.

Statement on Motion for New Trial as to Defendants, E. Root, James Root, Jean Lagier, J. A. Rodriguez, D. Rodriguez, and E. Bien.

Title of Court and Cause.

Be it remembered that this cause came on regularly for
24 trial on the — day of May, 1881, before the court, a jury having been waived by the parties.

The court proceeded to hear and determine the issues made by the pleadings as to the defendant. E. Root, who claims the southwest quarter section 15, township 3 south, range 14 west, S. B. M.

Whereupon the plaintiff, to sustain the issues on his part, called J. W. HAVERSTICK as a witness, who, being sworn, testified in substance as follows: That he was the receiver of the U. S. district land office for the Los Angeles land district, and as such had the custody of the records of said office, and that the township plat of township 3 south, range 14 west, S. B. M., was one of the records of said office. Witness then testified from the said plat and the marginal notes thereof that the township lines thereof were run in 1853 by the authority of the United States, and that the section lines were run in the field in February, 1868.

That said survey was approved by the U. S. surveyor general March 31, 1868, and said plat filed in the U. S. land office, then at San Francisco, April 22, 1868, and filed in the U. S. land office, at Los Angeles, November 21, 1871.

Witness further testified that the track book which he had
25 present in court was also one of the records of said office and contained official entries concerning the land in question.

Counsel for the plaintiff then asked the witness the following question:

Question. Read the entries you find in that tract book pertaining to this land.

Counsel for the defendant objected to the question, on the ground that it is inadmissible, as it did not call for the best evidence, said entries being merely abstracts of official documents that should be in said U. S. land office, the loss of said documents not having been accounted for, and upon the further ground that it was irrelevant and immaterial.

The court overruled the objection and defendant then and there duly excepted.

Witness then proceeded to read from said book the entries purporting to show that said land was covered by a State indemnity school selection of date April 22, 1868, and that said selection was approved and the land listed to the State of California November 23, 1871.

Upon cross-examination witness testified that the said township plat was suspended January 10, 1872, and released from suspension June 15, 1872, and that the filing of said plat of township 2 south, range 14 west, in the U. S. land office, at Los Angles, California, November 21, 1871, appeared to be an original filing.

26 Plaintiff, to further sustain the issues upon his part, then introduced in evidence list No. 1 of the U. S. land office, said list being certified to by the Commissioner of the General Land Office under date of November 23, 1871, and the Secretary of the Interior under date of November 24, 1871, a copy of which list, so far as it pertains to the lands in question, is hereto attached, marked Exhibit No. 1.

Plaintiff then introduced in evidence a patent from the State of California to W. S. Rosecrans, said patent being in the usual form of patents, and dated April 21, 1874, whereby the State of California purported to convey the lands in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed for the lands in question from W. S. Rosecrans to M. J. O'Connor, the plaintiff herein, of date April 12, 1875.

J. D. BICKNELL was sworn as a witness on behalf of plaintiff, and testified that he had been the attorney and agent of plaintiff since date of deed to plaintiff by W. S. Rosecrans, and the agent of said Rosecrans since the fall of 1872. That as agent for Rosecrans and for plaintiff rented the lands in controversy, with other lands, to various parties, who have used the lands for grazing, herding sheep thereon continuously since the fall of 1872 up

27 to the time the defendant entered thereon, in April, 1876; that the rent of said land for grazing purposes is reasonably worth 35 cents per acre per annum; that after the entry of the defendant on said land and before the commencement of this action the party to whom the lands was rented surrendered his lease in writing, and delivered the possession of said land, as far as said lease is concerned, to the plaintiff herein.

E. ROOT was sworn as a witness, and testified that the rents of said land were reasonably worth 62½ cents per acre a year.

JAMES ROOT was also sworn as a witness, and testified that the rents of said land were reasonably worth 62½ cents per acre per year.

The plaintiff rested his case.

The plaintiff stipulated that each of the defendants hereinafter mentioned would testify that he (defendant) had all of the qualifications of a pre-emptor, and had at the date of settlement upon the land claimed by him in this action.

The defendant (E. ROOT) was sworn in his own behalf, and testified that he settled upon said land about June 13, 1876, and applied to the register and receiver of the U. S. district land office to file his declaratory statement in due form upon said land, and was at that time living with his family upon said land; that after-
28 ward, about the 13th day of June, 1876, he tendered and offered to file said declaratory statement with said officers, and tendered the same and deposited said statement with the necessary fees therefor. That afterwards, about the 20th day of January, 1877, the defendant made his requisite proofs in writing of compliance with the laws of the U. S. pertaining to pre-empting Government lands of the U. S., and of his settlement and qualifications and his cultivation and improvements upon said land, and tendered the same to the officers of the land office aforesaid and deposited the same with said officers with all the legal fees, commissions, and requested said officers that he might be permitted to enter said land; that the defendant at the same time and in connection with said proof tendered the full Government price for said land in gold coin. That the register and receiver refused to file said declaratory statement or to receive the written proofs aforesaid, and refused to receive the Government price for said land. That the defendant appealed from the action of said officers to the Commissioner of the General Land Office at Washington and to the Secretary of the Interior, the proper officers to determine said matter, and that said matter is yet pending on appeal undecided in the office of the Secretary of the Interior. That the defendant at the time of his settlement upon said land built a house upon said land and made
29 other valuable improvements, and has cultivated and resided thereon continuously with his family since he settled thereon.

That he has never entered into any agreement with any person whereby the title which he may acquire to said land shall be for the benefit of any person or persons other than himself.

That said land is agricultural land, and not mineral land. That when he entered upon said land it was uncultivated, unimproved, unoccupied, and uninclosed; that the same had never been cultivated.

That the improvements upon said land was equal to the rents, issues, and profits thereof during the time it has been occupied by him.

Offer No. 1.

The defendant, to further sustain the issues on his part, offered to show that the township plat of township 3 S., R. 14 W., S. B. M., was

withdrawn from the U. S. land office at San Francisco June 26th, 1868, and offered in evidence a duly certified copy of an order from U. S. Surveyor General Upson, with the endorsements thereon, which was in figures and words as follows:

U. S. SURVEYOR GENERAL'S OFFICE,
SAN FRANCISCO, CAL., *June* 26, 1868.

J. W. SHANKLIN, Esq.,
Register U. S. Land Office, San Francisco.

30 SIR: You are respectfully requested to return to this office the plats of township 2 S. and 3 S., ranges 13 and 14 W., San Bernardino meridian, filed in your office April 22d, 1868.

Very respectfully, your obedient servant,

L. UPSON,
U. S. Surveyor General.

(Endorsed:) Filed May 26th, 1868, and map returned to surveyor general's office.

To which offer of proof plaintiff objected, on the ground that the same was irrelevant and immaterial and incompetent, and upon the further ground that, it appearing by the answer of defendant filed herein that said defendant entered upon said land in the —, 1876, after the same had been certified to the State of California and the State had disposed of the same by patent, and the defendant claiming the land as a pre-emptor, and not otherwise, he is not in a position to question or impeach the proceedings taken by the officers of the General Government in disposing of said land to the State, and of the State in disposing of said land.

The court then and there sustained the objection; to which ruling the defendant excepted in due form of law.

Offer No. 2.

Defendant then offered to prove the transmission of said
31 plat to the U. S. land office at Los Angeles by a letter of date Nov. 15, 1871, directed to H. C. Austin, then register of said land office, signed by J. R. Hardenberger, then U. S. surveyor general for the State of California, transmitting said plat to said office.

To which plaintiff objected, on the same grounds to last offer.

The court then and there sustained said objection; to which ruling the defendant excepted in due form of law.

Offer No. 3.

The defendant then offered in evidence the patent of the Rancho Sausal Redondo, with map attached thereto, with endorsements thereon, for the purpose of showing the existence of the said grant and date of final survey.

Said patent was in usual form, and shows that said Rancho Sausal Redondo was finally confirmed to Antonio Y. Abila, was surveyed and segregated from the adjoining public lands under instructions from the U. S. surveyor general by George Hansen, deputy U. S. sur-

veyor general, in 1868, which survey was finally approved by the Commissioner of the General Land Office March 22, 1875, and patent issued same day. No part of the land in controversy is included within said patent.

Plaintiff interposed the same objections to this offer as made to first offer above.

32 The court then and there sustained the objection; to which ruling the defendants in due form of law excepted.

Offer No. 4.

Defendant then offered in evidence a certified copy of map of U. S. Deputy Thompson's survey of said Rancho Sausal Redondo, made in July, 1868, including the lands in controversy, with all the certificates and endorsements thereon, including the certificate of approval thereof of Sherman Day, then U. S. surveyor general for the State of California, of date April 4th, 1869; said offer was made to show that said land was claimed by the owners of said grant as a part thereof.

Plaintiff objected to the introduction of said map upon the grounds set forth in objection to first offer.

The court then and there sustained said objection; to which ruling defendants excepted in due form of law.

Offer. No. 5.

Defendant then offered in evidence the decision of the Secretary of the Interior of the U. S., of date August 31st, 1871, in regard to the survey of the Rancho Sausal Redondo, to show that the survey of said rancho made by Thompson, including said land, was not rejected until October, 1871, together with the order of

33 the Commissioner of the General Land Office at Washington, and opinion of the U. S. Attorney General thereto attached, dated October 23, 1871.

Plaintiff objected, on the same grounds contained in objection to first offer of defendant, and upon the further ground that it appears upon its face to be the opinion of the Attorney General and Secretary upon questions of law.

The court then and there sustained said objections; to which ruling the defendant duly excepted in proper form of law.

Offer No. 6.

Defendant then offered in evidence the protest of the grant claimants of said Rancho Sausal Redondo to the Hansen survey of said rancho, which survey became the final survey of said rancho; said protest was dated May 23, 1868; said offer was made with the same intent as the last two offers of defendant.

Plaintiff objected to the evidence offered upon the grounds heretofore interposed to Offer No. 1, and upon the further grounds that the same was irrelevant, immaterial, and incompetent, as it appears upon the face of said protest that it is the statement of an attorney

only as to the facts therein contained, and there is no evidence offered to show that the same was the attorney of the parties he assumed to represent.

34 The court sustained the objection; to which ruling the defendant duly excepted.

Offer No. 7.

Defendant then offered in evidence the only description of the lands in question applied for and affidavit endorsed thereon ever filed by J. W. C. Buchanan in the county recorder's office of Los Angeles county, California, required by the twenty-ninth section of act of April 27, 1863, for the purpose of showing that the attempted description omitted to state whether the township was north or south, and whether the range was east or west.

To which plaintiff interposed same objections as to Offer No. 1.

The court sustained the objection, and defendant there duly excepted to said ruling.

Offer No. 8.

Defendant then offered in evidence the application of said J. Buchanan to purchase said land, of date March 6, 1868, accepted April 20, 1868, by the State locating agent, purporting to have been made in conformity with the said act of 1863, and applying for said land in lieu of the E. ½ of sec. 36, T. 2 S., R. 15 west, S. B. M., claimed to be within a private grant, to show that the application was not signed by said Buchanan, or by any person in his behalf, and that

35 said application was not accompanied by the affidavit of three disinterested witnesses stating, among other things, that said applicant was a resident of the State, and that the lands were unoccupied by any person except the applicant, as required by said act of April 27, 1863.

Also all of the endorsements upon said application; also the certificate of said locating agent, Leander Ransom, April 22, 1868, of the location of said lands in lieu of the same lands described in the application.

Also the deed of said applicant attached to said application of date March 6, 1868, said offer being made to show that said application was fraudulent and irregular, and to support the allegations in defendant's answer.

Plaintiff objected, on the ground that the same was irrelevant, immaterial, and incompetent, and upon the further ground that the defendant herein claimed the land in controversy as a pre-emptor, and under the laws of the United States, and held the same adverse to the State title, and not being in privity thereto could not in this proceeding inquire into or question any of the proceedings taken by the plaintiff herein or his grantor to purchase the said land of the State.

Which objection was by the court sustained; to which ruling the defendant excepted in due form of law.

36 Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans, of date ——, 1869, for the land in question, with all the endorsements thereon, which said application was made in lieu of same lands as those described in the application of John W. C. Buchanan; also certificate of purchase issued to said Rosecrans for said land, for the purpose of showing that it was a continuation of the same proceeding.

To which offers plaintiff interposed the same objection last above made.

The court then and there sustained said objection; when defendant excepted in due form of law.

Offer No. 10.

The defendant then offered in evidence the certified copy of the patent map of the survey of the Rancho Sausal Redondo to show that the lands in lieu of which the lands in question were applied to be purchased from the State, and in lieu of which said lands were listed to the State by the United States authorities, were included in that survey, and the endorsements upon the patent map of the approval thereof, made in 1875, for the purpose of showing that said lands were not known to have been lost to said State by reason of being included within said survey, when the lands in ques-
37 tion were applied to be purchased or when said land was listed to said State.

Plaintiff objected to said evidence on the ground that the same was irrelevant, immaterial, and incompetent, and upon the grounds interposed to Offer No. 8.

The court then and there sustained said objection; to which ruling defendant excepted in due form of law.

Offer No. 11.

The defendant then offered in evidence the list offered in evidence by plaintiff from the U. S. to the State of California for the purpose of showing that the lands in question were certified to the State of California in lieu of E. ½ Sec. 36, T. 2 S., R. 14 W., S. B. M.

No objection was interposed, and the evidence was admitted.

Offer No. 12.

The defendant then offered in evidence a certificate of purchase for said land from the State of California to W. S. Rosecrans, of date ——, to show that in satisfaction of the application of said Rosecrans the said certificate of purchase was issued.

Plaintiff objected on the ground that the same was irrelevant, immaterial, and incompetent.

38 The court sustained the objection and the evidence was excluded; to which ruling the defendant excepted in due form of law.

Offer No. 13.

The defendant then offered in evidence the patent heretofore offered by the plaintiff for the land in question from the State of California to said W. S. Rosecrans, of date —— —, 1874, for the purpose of showing that said patent was issued in satisfaction of the application of said Rosecrans made in 1869, above offered.

No objection was made, and the same was received in evidence.

Offer No. 14.

Defendant then offered in evidence the selection of said lands in lieu of the same lands described in the application and certificate of location or selection; said selection was of date May 27th, 1868, and made by the State locating agent; also the acceptance of said selection, May 27th, 1868, by J. W. Shanklin, register of the U. S. land office, for the purpose of showing that the list last above offered was in satisfaction of said selection and to sustain the allegations of the defendant's answer.

Plaintiff objected to said evidence, on the ground stated in defendant's Offer No. 8.

39 The court then and there sustained said objection; to which ruling the defendant then and there duly excepted.

Offer No. 15.

Defendant then offered to prove, by David M. Main, a witness in court, that in March, 1868, at the request of W. S. Rosecrans, or of persons in his employ, he went down upon the tract of land known as the Rosecrans tract, in Los Angeles county, in the immediate vicinity of the land in question, for the purpose of locating and purchasing lands from the State of California.

That witness carried fifteen or twenty other men who were solicited to go on like errand as witness; that is, to locate and purchase land.

That witness saw a great number of men going and coming from said tract, who were solicited by said Rosecrans or his agents for the same purpose; that witness saw surveyors in the field at work while on the land.

That after they had been upon the land they returned to Los Angeles and went to the office of one of the agents of Rosecrans, and there were paid money and made deeds of the said land to Rosecrans, and also signed other papers in connection therewith. That nothing further was done to procure title to said land by the applicants. No money was ever paid by them, and they had no further interest in said land.

40 To which offer plaintiff objected, on the ground that the same was irrelevant, immaterial, and incompetent; and also for the further grounds expressed in plaintiff's objection to Offer No. 8 of the defendant; and upon the further ground that there is no allegation in defendant's answer that the plaintiff was a party to or had any notice of any fraud practiced by Rosecrans or any other

person in acquiring the title to said land from the State of California.

The court sustained the objection, and defendant duly excepted to the ruling of the court.

Defendant then offered to prove the same matter by witnesses in court, to wit, John Rhodes and John Summers.

The court then proceeded to try the issues made by the pleadings as to the defendant, James Root, who claims the N. E. ¼ sec. 11, T. 3 S., R. 14 W., S. B. M.

It was then stipulated between the parties that the testimony of J. W. Haverstick, taken in the case of E. Root, pertaining to the township plat of township 3 S., R. 14 west, S. B. M., should be as taken in this case.

Also, it was stipulated that the testimony of said Haverstick in relation to the tract-book of the U. S. land office would be the same concerning the land in question as in the case of E. Root,
41 subjected to the same objections, rulings, and exceptions, and the same should be introduced in this cause.

Plaintiff then offered in evidence the list No. 1, offered in the case of E. Root, so far as the same pertained to the land in question, together with certificate of the Commissioner of the General Land Office and Secretary of the Interior, wherein the land in controversy was described, and purported thereby to be certified to the State of California as indemnity school land.

Plaintiff then offered in evidence a patent from the State of California, in usual form, dated April 21, 1874, whereby the State of California purported to convey the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed from said Rosecrans to the plaintiff, which was dated April, 1875, purporting to convey the said lands to said plaintiff.

It was then stipulated that the evidence of J. D. Bicknell, taken in the case of E. Root, was equally applicable to the land in question, and should be as if taken in this case.

It was also stipulated that the evidence of E. Root and James Root, witnesses sworn in the case of E. Root in behalf of plaintiff, as to the rents, issues, and profits applied to the lands in question, should be as if taken herein.

Plaintiff then rested.

42 It was then stipulated that the offers of evidence made by the defendant in the case of E. Root, marked, respectively, Offer 1, Offer 2, Offer 3, Offer 4, Offer 5, Offer 6, should be considered as if made in this case, subject to the same objections, rulings, and exceptions accompanying each offer, and should be considered so numbered in this case.

Offer No. 7.

The defendant then offered in evidence the only description of the land in question applied for and affidavit endorsed thereon ever filed by him, James A. Wilson, in the county recorder's office of Los An-

geles county, required by the 29th section of the act of April 27, 1868, for the purpose expressed in Offer No. 7 of E. Root.

Plaintiff objected, on the same grounds expressed in objection to Offer No. 7, in case of E. Root. The court sustained the objection, and defendant duly excepted.

Offer No. 8.

Defendant then offered in evidence the application of said Wilson to purchase said land, of date March 6, 1868, accepted April 20, 1868, by the State locating agent, purporting to have been made in conformity with said act of 1863, applying for said land in lieu of W. ½ sec. 16, T. 4 S., R. 10 west, S. B. M., claimed to be within the
43 limits of a private grant, with same purpose as like offer in case of E. Root (Offer No. 8); also all of the endorsements upon said application; also the certificate of said Locating Agent Ransom, May 27, 1868, of location of said land, it being the same lands described in the application; also the deed of said applicant, attached to said application, of date March 6, 1868, said offer being made with like purpose as expressed in like offer (No. 8), E. Root.

Plaintiff objected, on same grounds expressed in objection to like offer (No. 8) of E. Root. The court sustained the objection, and defendant duly excepted.

Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans for the land in question, made in 1869 for the land in question, for the purposes expressed in Offer 10, E. Root.

Plaintiff interposed same objection as to introduction of like evidence in case of E. Root. The court sustained the objection, the evidence was excluded, and defendant then duly excepted.

Offer No. 10.

The defendant then offered in evidence a duly certified copy of the map of the Rancho San Juan Cajon de Santa Ana, for the purpose of showing that the W. ½ of sec. 16, T. 4 S., R. 10 west,
44 S. B. M., was included within the survey of said grant, and that the survey of said grant had not been finally confirmed when said application was made by the approval of the Commissioner of the General Land Office.

Plaintiff objected, upon the same grounds expressed in objection to like evidence in the case of E. Root.

The court sustained said objection, and the evidence was excluded; to which ruling the defendant duly excepted.

Offer No. 11.

Defendant then offered in evidence the list introduced in evidence by plaintiff from the U. S. to the State of California, for the purpose

of showing that the lands in question were certified to said State in lieu of the W. ½ of sec. 16, T. 4 S., R. 10 west, S. B. M.

No objection was made, and such evidence was received.

Offer No. 12.

The defendant then offered in evidence a certificate of purchase to W. S. Rosecrans, of date July 24, 1872, from the State of California for the land in question, for the purpose expressed in offer of like evidence in the case of E. Root.

The plaintiff objected, on the same grounds expressed in his objection to like evidence in the case of E. Root.

45 The court sustained the objection, and the evidence was excluded; to which ruling the defendant then and there excepted in due form of law.

Offer No. 13.

The defendant then offered in evidence the patent heretofore offered by plaintiff for the land in question from the State of California to said W. S. Rosecrans, of date April 21, 1874, for the same purpose expressed in offer of like evidence in case of E. Root.

No objection was made, and said evidence was received.

Offer No. 14.

Defendant then offered in evidence the selection of said land made in lieu of same lands described in the application, date May 27, 1868; also the acceptance of said selection of same date by register of U. S. land office, for the purpose expressed in like offer in case of E. Root.

With the same objection, ruling, and exception as to like offer in case of E. Root.

Offer No. 15.

Defendant offered to prove the matters and things set forth in Offer No. 15 in case of E. Root by witnesses Main, Tweed, and Rhodes.

The same objections were interposed by plaintiff as in case of E. Root to like offer. The evidence was excluded by the court, and defendant excepted.

46 JAMES ROOT was then called as a witness in his own behalf, when it was stipulated that he had all of the qualifications of a pre-emptor under the laws of the U. S.; that he settled upon the land on June 14, 1876, and that afterwards, to wit, about January 20th, 1877, he offered to prove up his claim in the U. S. land office and make entry of said land. Witness then testified that at the time of his settlement upon said land he built a house and cultivated the land, and that he had cultivated the same every year since his entry thereon, and that his improvements were equal to the rents of said land.

It was then stipulated that his testimony as to the condition of the land settled upon by him would be the same as that of E. Root.

It was further stipulated that the testimony of witness as to the offer of his declaratory statement in the U. S. land office and its refusal would be the same as that of E. Root as to like acts on his part.

It was further stipulated that the testimony of the witness as to his offer of proof and payment for the land in question would be the same as that of E. Root as to like acts on his part.

It was also stipulated that the testimony of witness as to the acts of the register and receiver upon said offer of proof and payment, and as to the present condition of his pre-emption
47 claim, would be the same as that of E. Root upon like matters.

The court then proceeded to try the issues raised by the pleadings as to the defendant, J. Lagier, who claims fraction. sec. S. ½ (lots 1, 2, 3, 4) 24, township 3 south, R. 14 west, S. B. M.

It was then stipulated that the evidence of J. W. Haverstick, taken in the case of E. Root, pertaining to township plat of township 3 S., R. 14 west, S. B. M., should be as if taken in this case.

Also it was stipulated that said Haverstick's testimony in relation to the tract-book of the U. S. land office would be the same concerning the land as in case of E. Root, but with the same objections, rulings, and exceptions, and the same should be deemed to be as introduced in this case.

Plaintiff then offered in evidence list No. 1, so far as the same pertained to the land in question, together with the certificates of the Commissioner of the General Land Office and Secretary of the Interior, wherein the land in question was described and purported thereby to be certified to the State of California as indemnity school lands.

Plaintiff then offered in evidence a patent for said land from the State of California in usual form, dated April, 1874, whereby
48 the State of California purported to grant the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed from W. S. Rosecrans to the plaintiff, which was dated April, 1875, purporting to convey the said lands to said plaintiff.

It was stipulated that the evidence of J. D. Bicknell, taken in case of E. Root, should be as if taken in this case, and equally true of the land in question.

It was also stipulated that the evidence of E. Root and James Root, witnesses sworn in the case of E. Root in behalf of plaintiff, as to the rents, issues, and profits, would be the same concerning this land as in case of E. Root.

Plaintiff rested.

Defense.

It was stipulated that the offers of evidence made by the defendant in the case of E. Root, marked, respectively, Offer 1, Offer 2, Offer 3, Offer 4, Offer 5, Offer 6, should be considered as if made in this case, subject to the same objection, ruling, and exceptions ac-

companying each offer, and should be considered so numbered in this case.

Offer No. 7.

The defendant then offered in evidence the only description of the lands in question applied for, and affidavit endorsed
49 thereon, ever filed by Harvey Davis in the county recorder's office of Los Angeles county, required by the 29th section of the act of April 27th, 1868, for the purpose expressed in offer No. 7 of E. Root.

Plaintiff objected, on the same grounds expressed in objection to Offer No. 7 in case of E. Root. The court sustained the objection, and defendant duly excepted.

Offer No. 8.

Defendant then offered in evidence the application of said Harvey Davis to purchase said land, of date March 6th, 1868, accepted April 20th, 1868, by the State locating agent, purporting to have been made in conformity with said act of 1863, purporting to apply for said lands in lieu of N. W. $\frac{1}{4}$ and W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, sec. 16, T. 4 S., R. 3 W., S. B. M., claimed to be within the limits of a private grant, with the same purpose as like offer in case of E. Root (Offer No. 8), and all of the endorsements upon said application, upon the back of which appeared the following description, to wit, San Bernardino meridian, township No. 3 south, range No. 14 west, sec. 24, 23, 26, 27; lots 1, 2, 3, 4, sec. 24; lot 1, sec. 23; lots 1, 2, 3, sec. 26; lot 1, sec. 27, for the purpose of showing that said application of Harvey Davis was for the north fractional $\frac{1}{2}$ of sec. 24, and not for any other land, and that said application was
50 the basis of all subsequent proceedings, to wit, the selection, location, and listment; also the deed of said applicant attached to said application, of date March 6th, 1868, said offer being made with like purpose as expressed in like Offer No. 8, E. Root.

Plaintiff objected, on same grounds expressed in objection to like Offer No. 8 of E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans for the land in question, made in 1869 for the land in question, for the purpose expressed in Offer No. 9, in case of E. Root.

Plaintiff interposed same objection as to Offer 9, in case of E. Root. The court sustained the objection, the evidence was excluded, and defendant duly excepted.

Offer No. 10.

Defendant then offered in evidence the map of the Rancho San

Jacinto, duly certified by the Commissioner of the General Land Office, together with other documentary evidence, for the purpose of showing that the lands in lieu of which the lands in question were applied to be purchased from the State were in the
51 limits of said grant, and that no final survey of said grant had been made as late as 1876.

The plaintiff objected, on the same grounds expressed in objection to like evidence in case of E. Root.

The court sustained the objection, and the evidence was excluded.

Defendant then excepted in due form of law to said ruling.

Offer No. 11.

Defendant then offered in evidence the list heretofore offered in evidence by plaintiff from the U. S. to the State of California, for the same purpose as expressed in offer of like evidence in case of E. Root.

No objection was offered, and the evidence was received.

Offer No. 12.

Defendant then offered in evidence the certificate of purchase of W. S. Rosecrans of date ——, from the State of California, for the land in question, for the same purpose expressed in like offer, in evidence in case of E. E. Root.

The plaintiff objected, on the grounds stated in the objections to like evidence in the case of E. Root.

The court sustained the objection, and defendant then and there duly excepted to the ruling.

52 Offer No. 13.

The defendant then offered in evidence the patent from the State of California for said land to said Rosecrans, of date ——, 1874, for the same purpose expressed in offer of like evidence in the case of E. Root, which patent was received in evidence.

Offer No. 14.

Defendant then offered in evidence the selection of said land made in lieu of same land described in the application dated May 27, 1868; also acceptance of said selection of same date by register of U. S. land office, for the purpose expressed in like offer in case of E. Root.

Plaintiff objected on same ground expressed in offer No. 14 of E. Root.

The court sustained the objection, and the defendant duly excepted.

Offer No. 15.

Defendant offered to prove the matters and things set forth in Offer No. 15, in case of E. Root, by witnesses Main, Teed, and Rhodes.

The same objections were interposed by the plaintiff. The court sustained the objection, and defendant excepted.

It was stipulated that the defendant, J. Lagier, had all the qualifications of a pre-emptor, and that he would testify as to the fulfillment of the pre-emption laws as the defendant, E. Root and
53 James Root in their respective causes; that he would testify that he settled upon said land in April, 1876, and tendered proof on December 11, 1876, with full payment of money for land to the U. S. land officers at said land office, and that his testimony as to action of the U. S. land officers would be the same as the testimony of E. Root in the case of E. Root; also, that his testimony as to improvements on the land being equal to the rents would be the same as that of E. Root in his own behalf.

The court then proceeded to try the issues in the pleadings as to the defendant, D. Rodriguez, who claims N. E. ¼ sec. 24, T. 3 S., R. 14 west, S. B. M.

It was stipulated that the evidence of J. W. Haverstick, taken in the case of E. Root, pertaining to township plat of township 3 south, range 14 west, S. B. M., should be as if taken in this case.

Also, it was stipulated that said Haverstick's testimony in relation to the tract book of the U. S. land office would be the same concerning the land in question as in the case of E. Root, but with the same objection, rulings, and exceptions; and the same shall be deemed as introduced in this case.

Plaintiff then offered in evidence list No. 1, so far as the
54 same pertains to the land in question, together with the certificates of the Commissioner of the General Land Office and Secretary of the Interior, wherein the land in controversy was described and purported thereby to be certified to the State of California as indemnity school lands.

Plaintiff then offered in evidence a patent for said land from the State of California in the usual form, dated April 21, 1874, whereby the State of California purported to grant the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed from W. S. Rosecrans to plaintiff, which was of date April, 1875, purporting to convey the said land to said plaintiff.

It was also stipulated that the evidence of J. D. Bicknell, taken in the case of E. Root, should be as if taken in this case and applying to this land.

It was also stipulated that the evidence of E. Root and James Root, witnesses in behalf of plaintiff, as to the rents, issues, and profits, should be the same concerning this land as in the case of E. Root.

Plaintiff rested his case.

Defense.

It was stipulated that the offers of evidence made by the
55 defendant in the case of E. Root, marked, respectively, Offer 1, Offer 2, Offer 3, Offer 4, Offer 5, Offer 6, should be considered as

if made in this case, subject to the same objections, rulings, and exceptions accompanying such offers, and should be considered so numbered in this case.

Offer No. 7.

The defendant then offered in evidence the only description of the lands in question applied for and affidavit endorsed thereon ever filed by Samuel C. Whipple in the county recorder's office of Los Angeles county, required by the 29th section of the act of April 27, 1868, for the purpose expressed in Offer No. 7 of E. Root.

Plaintiff objected, on the same grounds expressed in objection to offer No. 7. The court sustained the objection, and defendant duly excepted.

Offer No. 8.

Defendant then offered in evidence the application of said Whipple to purchase said land of date March 6th, 1868, accepted April 20th, 1868, by the State locating agent, purporting to have been made in conformity with said act of 1863, applying for said land in lieu of W. ½ sec. 16, T. 6 S., R. 9 west, S. B. M., claimed to be within the limit of a private grant, with the same purpose as like offer in case of E. Root (Offer No. 8); also all of the endorsements upon
56 said application; also the certificate of said locating agent, Ransom, April 22d, 1868, of location of said land in lieu of same lands described in the application; also the deed of said applicant attached to said application, of date March 6th, 1868, said offer being made with like purpose as expressed in like offer (No. 8) of E. Root.

Plaintiff objected on same grounds expressed in objection to like Offer No. 8 of E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans for the land in question, made in 1869 for the land in question, for the purpose expressed in Offer No. 9 in case of E. Root.

Plaintiff interposed same objection as to Offer No. 9 in case of E. Root.

The court sustainedthe objection ; the evidence was excluded, and defendant excepted to said ruling.

Offer No. 10.

Defendant then offered in evidence the map of the Rancho Santiago de Santa Ana, together with other documentary evidence, for the purpose of showing that the lands in lieu of which the lands were applied to be purchased from the State were not lost and
57 no final survey of said rancho had been made at the date of said application and at the time of the listment of said land.

Plaintiff objected to said evidence, on the same grounds as ex-

pressed in objection to like evidence contained in Offer No. 10 of E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 11.

The defendant then offered in evidence the list heretofore introduced in evidence by plaintiff for the same purpose expressed in offer of like evidence in case of Root.

Evidence was received.

Offer No. 12.

The defendant then offered in evidence a certificate of purchase to W. S. Rosecrans, of date April 18, 1872, from the State of California for the same purpose expressed in offer of like evidence (numbered 12, E. Root.)

The plaintiff objected on same ground expressed in objection to Offer 12, E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 13.

Defendant then offered in evidence patent heretofore offered by plaintiff for the land in question to said Rosecrans, of date
58 ——, 1874, for the purpose expressed in Offer No. 13, E. Root.
The evidence was received.

Offer No. 14.

Defendant offered in evidence the selection of said lands made in lieu of said land described in the application of Whipple above for the reason expressed in like Offer No. 14 of E. Root.

Plaintiff objected on same grounds expressed in objection to like evidence offered in Offer No. 14, E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 15.

Defendant then offered to prove the matters and things contained in Offer No. 15, E. Root, by the same witnesses, Main, Rhodes, and Teed, for the same purpose as expressed in said offer of E. Root.

Plaintiff objected on same grounds expressed in objection to like evidence in Offer No. 15, E. Root.

The court sustained the objection, and the defendant duly excepted.

It was stipulated that the defendant Rodriguez had all the qualfications of a pre-emptor, and that he would testify as to the fulfillment of the pre-emption laws as E. Root and James Root in
59 their respective cases; that he would testify that he settled upon said land in April, 1876, and tendered proof on Decem-

ber 11, 1876, with full payment of money for the land to the U. S. land officers at said land office, and that his testimony as to the action of the U. S. land officers would be the same as the testimony of E. Root in the case of E. Root; also, that his testimony as to improvements on the land being equal to the rents would be the same as that of E. Root in his own behalf.

The court then proceeded to try the issues raised in the pleadings as to the defendant, J. A. Rodriguez, who claims N. W. ¼ sec. 24, T. 3 south, R. 14 west, S. B. M.

It was stipulated that the evidence of J. W. Haverstick taken in the case of E. Root, pertaining to township plat of township 3 south, should be as if taken in this case.

Also, it was stipulated that the said Haverstick's testimony in relation to the tract book of the U. S. land office would be the same concerning this land as in the case of E. Root, but with the same objections, rulings, and exceptions, and shall be deemed as introduced in the cause.

Plaintiff then offered in evidence list No. 1, so far as the same pertains to the land in question, together with the certificates of the Commissioner of the General Land Office and Secretary of
60 the Interior, wherein the land in controversy was described and purported thereby to be certified to the State of California as indemnity school lands.

Plaintiff then offered in evidence a patent for said land from the State of California in usual form, dated ———, 1874, whereby the State of California purported to grant the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed from W. S. Rosecrans to plaintiff which was dated April, 1875, purporting to convey said land to said plaintiff.

It was also stipulated that the evidence of J. D. Bicknell taken in case of E. Root should be as if taken in this case and applying to this land.

It was also stipulated that the evidence of E. Root and James Root, witnesses in behalf of plaintiff, as to the rents, issues, and profits, should be the same concerning this land as in the case of E. Root.

Plaintiff rested his case.

Defense.

It was stipulated that the offers of evidence made in the case of E. Root, marked, respectively, Offer 1, Offer 2, Offer 3, Offer 4, Offer 5, Offer 6, should be considered as if made in this case, sub-
61 ject to the same objections, rulings, and exceptions accompanying such offers, and should be considered so numbered in this case.

The defendant then offered in evidence the only description of the lands in question applied for and affidavit endorsed thereon ever filed by Samuel C. Whipple in the county recorder's office of Los Angeles county, required by the 29th sec. of the act of April 27th, 1868, for the purpose expressed in Offer No. 7, E. Root.

Plaintiff objected, on the same grounds expressed in objection to Offer No. 7.

The court sustained the objection, and defendant duly excepted.

Offer No. 8.

Defendant then offered in evidence the application of said Whipple to purchase said land, of date March 6th, 1868, accepted April 20th, 1868, by the State locating agent, purporting to have been made in conformity with said act of 1863, applying for said land in lieu of W. ½ sec. 16, T. 5 S., R. 9 W., S. B. M., claimed to be within the limits of a private grant, with same purpose as like offer in case of E. Root (Offer No. 8), all of the endorsements upon said application; also the deed of said applicant attached to said application of date March 6th, 1868, said offer being made with like purpose as expressed in like Offer No. 8, E. Root.

62 Plaintiff objected on same grounds expressed in objection to like offer No. 8 of E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 9.

Defendant then offered in evidence the application of W. S. Rosecrans for the land in question, made in 1869 for the land in question, for the purpose expressed in Offer No. 9, in case of E. Root.

Plaintiff interposed the same objection as to Offer No. 9 in case of E. Root.

The court sustained the objection; the evidence was excluded, and defendant duly excepted.

Offer No. 10.

Defendant then offered in evidence the map of the Rancho Santiago de Santa Ana, and together with other documentary evidence, for the purpose of showing that the land in lieu of which the lands were applied to be purchased from the State were not lost and no final survey of said rancho had been made at the date of said application and at the time of the listment of said land in 1872.

Plaintiff objected to said evidence on the same grounds as expressed in objection to like evidence contained in Offer No. 10, in case of E. Root.

63 The court sustained the objection, and defendant duly excepted.

Offer No. 11.

The defendant then offered in evidence the list heretofore introduced in evidence by plaintiff for the same purpose expressed in offer of like evidence in case of E. Root.

Evidence was received.

Offer No. 12.

Defendant then offered in evidence the certificate of purchase to W. S. Rosecrans, of date April 18, 1872, from the State of California, for

same purpose expressed in offer of like evidence, numbered 12, E. Root.

The plaintiff objected, upon the same ground expressed in objection to Offer No. 12, E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 13.

The defendant then offered in evidence patent heretofore offered by plaintiff for the lands to said Rosecrans, dated ———, 1874, for the purposes expressed in Offer No. 13, E. Root.

Evidence was received.

Offer No. 14.

64 Defendant then offered in evidence the selection of said land described in the application of Whipple above for the same reason expressed in like Offer No. 14 of E. Root.

Plaintiff objected, upon like grounds expressed in objection to like evidence offered in Offer No. 14, E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 15.

Defendant offered to prove the matters and things contained in Offer No. 15, E. Root, by the same witnesses, Main, Rhodes, and Teed, for the same purpose as expressed in said offer of E. Root.

Plaintiff objected, on same grounds expressed in objection to like evidence in Offer No. 15, E. Root.

The court sustained the objection, and defendant duly excepted.

It was stipulated that the defendant had all the qualifications of a pre-emptor, and that he would testify as to the fulfillment of the pre-emption laws as E. Root and James Root in their respective cases; that he would testify that he settled upon said land in April, 1876, and tendered proof and payment on December 11th, 1876, with full payment of money for land to the U. S. land officers at

65 said land office, and that his testimony as to action of U. S. land officers would be the same as the testimony of E. Root, in the case of E. Root; also that his testimony as to improvement on the land being equal to the rents would be the same as that of E. Root in his own behalf.

The court then proceeded to try the issues raised in the pleadings as to the defendant, E. Bien, who claims the N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and lots 3, 4, and 5, sec. 19, T. 3 south, R. 13 W., S. B. M.

It was stipulated that the evidence of J. W. Haverstick, taken in the case of E. Root, pertaining to township plat of township 3 south, R. 13 west, S. B. M., should be as if taken in this case.

Also, it was stipulated that said Haverstick's testimony in relation to the tract-book of the U. S. land office would be the same concerning the land as in the case of E. Root, but with the same

objections, rulings, and exceptions, and shall be deemed as introduced in this case.

Plaintiff then offered in evidence list No. 1, so far as the same pertained to the land in question, together with the certificates of the Commissioner of the General Land Office and Secretary of the Interior, wherein the lands in controversy were described, and purported thereby to be certified to the State of California as indemnity school lands.

Plaintiff then offered in evidence a patent for said land
66 from the State of California, in usual form, dated ——, 1874, whereby the State of California purported to grant the land in question to W. S. Rosecrans.

Plaintiff then introduced in evidence a deed from W. S. Rosecrans to plaintiff, which was dated ——, 1874, purporting to convey the said land to said plaintiff.

It was also stipulated that the evidence of J. D. Bicknell, taken in the case of E. Root, should be as if taken in this case and applying to this land.

It was also stipulated that the evidence of E. Root and James Root, witnesses in behalf of the plaintiff, as to the rents, issues, and profits, should be the same concerning this land as in the case of E. Root.

Plaintiff rested his case.

Defense.

It was stipulated that the offers of evidence made by defendant in the case of E. Root, marked respectively Offer 1, Offer 2, Offer 3, Offer 4, Offer 5, and Offer 6, should be as if made in this case, subject to the same objections, rulings, and exceptions accompanying such offers, and should be considered so numbered in this case.

Offer No. 7.

The defendant then offered in evidence the only description of the lands in question applied for, and affidavit endorsed
67 thereon, ever filed by Caleb Farris in the county recorder's office of Los Angeles county, required by the 29th section of the act of April 27th, 1863, for the purpose expressed in Offer No. 7, E. Root.

Plaintiff objected, on the same grounds expressed in like objection to Offer No. 7. The court sustained the objection, and defendant duly excepted.

Offer No. 8.

Defendant then offered in evidence the application of said Caleb Farris to purchase said land, of date March 6th, 1868, accepted April 20th, 1868, by the State locating agent, purporting to have been made in conformity with said act of 1863, applying for said land in lieu of W. ½ sec. 36, T. 3 S., R. 5 W., S. B. M., claimed to be within the limits of a private grant, with same purpose as like offer in case of E. Root (Offer No. 8); all of the endorsements upon

said application; also the deed of said applicant attached to said application, of date March 6th, 1868, said offer being made with like purpose as expressed in like Offer No. 8, E. Root.

Plaintiff objected, on same grounds expressed in objection to like Offer No. 8 of E. Root.

The court sustained the objection, and defendant duly excepted.

Offer No. 9.

68 Defendant then offered in evidence the application of W. S. Rosecrans for the land in question, made in 1869 for the land in question, for the purposes expressed in Offer No. 9 in case of E. Root.

Plaintiff interposed same objection as to Offer No. 9 in case of E. Root.

The court sustained the objection, the evidence was excluded, and defendant duly excepted.

Offer No. 10.

Defendant then offered in evidence the map of the Rancho Sobrante de San Jacinto, duly certified by the Commissioner of the General Land Office, together with other documentary evidence, for the purpose of showing that the lands, in lieu of which the lands in question were applied, to be purchased from the State were in the limits of said grant, and that no part or any survey of said grant had been made as late as 1876.

The plaintiff objected, on the same grounds expressed in objection to like evidence in case of E. Root.

The court sustained the objection, and the evidence was excluded. Defendant then excepted in due form of law to said ruling.

Offer No. 11.

Defendant then offered in evidence the list heretofore offered in evidence by plaintiff from the U. S. to the State of California
69 for the same purpose as expressed in offer of like evidence in case of E. Root.

No objection was offered, and the evidence was received.

Offer No. 12.

Defendant then offered in evidence the certificate of purchase of W. S. Rosecrans, of date ——, from the State of California for the land in question for the same purposes expressed in like offer of evidence in case of E. Root.

The plaintiff objected, on the grounds stated in the objection to like evidence in case of E. Root.

The court sustained the objection, and defendant then and there excepted to the ruling.

Offer No. 13.

The defendant then offered in evidence the patent from the State of California for said land to said Rosecrans, of date ——, 1874, for the same purpose expressed in offer of like evidence in case of E. Root, which patent was received in evidence.

Offer No. 14.

Defendant then offered in evidence the selection of said lands made in lieu of same land described in the application dated April 22, 1868; also acceptance of said selection of same date by register of U. S. land office for the purpose expressed in like offer in case of E. Root.

70 Plaintiff objected, on the same ground expressed in offer No. 14 of E. Root.

The court sustained the objection, and the defendant duly excepted.

Offer No. 15.

Defendant offered to prove the matters and things set forth in offer No. 15 of case of E. Root by witnesses Main, Teed, and Rhodes.

The same objections were interposed by the plaintiff. The court sustained the objection, and defendant excepted.

It was then stipulated that the defendant had all of the qualifications of a pre-emptor, and that he would testify as to the fulfillment of the pre-emption laws as E. Root and James Root in their respective cases; that he would testify that he settled upon said land June 27, 1876, and tendered proof on January 15, 1877, with full payment of money for said land to the U. S. land officers at the said U. S. land office, and that his testimony as to action of the U. S. land officers would be the same as the testimony of E. Root; also, that his testimony as to value of the improvements put upon said land by him being equal to the rents would be the same as that of E. Root.

Defendant here assigns and specifies the errors of law committed by the court; which were duly excepted to by defendant.

71 Exhibit No. 1.

List No. 1 is in usual form, and purports to list the land claimed by the said several defendants to the State of California, and to which are attached the following certificates, to wit:

Department of the Interior,
General Land Office, 23*d November*, 1871.

It is hereby certified that the tracts described in the foregoing list are embraced in the original lists now on file in this office of land selected as indemnity for deficiencies in the townships named, which indemnity school selections are authorized in the above cited acts of

Congress of March 3, 1853, February 26, 1859, and July 23, 1866.

It is further certified that the said tracts have been examined and compared with the township plats and tract-books of this office, and that the indemnity is properly due to the townships for which selected are found to be subject to selection and free from conflict, and it is therefore recommended that the list be approved, subject to any valid interfering rights which may have existed at the date of selection.

(Signed) WILLIS DRUMMOND,
Commissioner.

DEPARTMENT OF THE INTERIOR,
24th November, 1871.

72 The foregoing list is hereby approved, subject to any valid interfering rights which may have existed at the date of selection.

(Signed) C. DELANO, *Secretary.*

GENERAL LAND OFFICE, *23d November*, 1871.

The tracts embraced in the following lists have been critically examined, and are found to be free from conflict, and to enure to the State for the purposes indicated.

M. MOBLEY.
JAMES J. BARNES.

73 In the trial as to defendant, E. Root, the court erred—

1. The court erred in admitting as evidence the testimony of J. W. Haverstick as to the U. S. tract-book pertaining to the land in question, on the grounds and for the reasons in the objection stated.

2. The court erred in excluding the evidence tendered in Offer No. 1, to wit, the demand of the U. S. surveyor general of the State of California for the withdrawal of the township plats from the U. S. land office.

3. The court erred in excluding the letter of transmittal transmitting said township plats to H. C. Austin, register of U. S. land office, signed by U. S. surveyor general.

4. The court erred in excluding the patent of the Rancho Sausal Redondo, with maps attached thereto and endorsements thereon, tendered in Offer No. 3.

5. The court erred in excluding the certified copy of the Thompson survey of said Rancho Sausal Redondo, offered in evidence in Offer No. 4.

6. The court erred in excluding the decision of the Secretary of the Interior, tendered in Offer No. 5.

74 7. The court erred in excluding the protest of the attorney for the grant claimants tendered in Offer No. 6.

8. The court erred in excluding the evidence of the description, or pretended description, of said lands and affidavit endorsed thereon, filed by John W. C. Buchanan in the county recorder's office of Los Angeles county.

9. The court erred in excluding the application of said Buchanan to purchase said land from the State, as contained in Offer No. 8; also of papers accompanying said application and the endorsements thereon.

10. The court erred in excluding the application of W. S. Rosecrans for said land, as contained in Offer 9 of defendant.

11. The court erred in excluding the map of the Rancho Sausal Redondo and other documentary evidence tendered in Offer No. 10 of defendant.

12. The court erred in excluding the certificate of purchase of W. S. Rosecrans for the land in question tendered in offer No. 12.

13. The court erred in excluding the evidence of the selection of said land as contained in Offer No. 14 of defendant.

14. The court erred in excluding the evidence of witnesses Rodes, Main, and Teed, as tendered in Offer No. 15 of defendant.

75 In the cases of D. Rodriguez and J. A. Rodriguez, defendants, each for himself, and not one for the other, assigns the errors of law committed by the court, which were duly excepted to by the respective defendants.

The first seven errors are assigned as in the case of E. Root.

8. The court erred in excluding the evidence offered of the description, or pretended description, of lands and affidavit endorsed thereon, filed by Samuel C. Whipple in the county recorder's office of Los Angeles county.

9. The court erred in excluding the application of said Whipple to purchase said land from the State as contained in Offer 8 respectively of said defendants; also of papers accompanying said applications and endorsements thereon.

10. The court erred in excluding the application of W. S. Rosecrans for said land as contained in Offer 9 of each defendant.

11. The court erred in excluding the map of the Rancho Santiago de Santa Ana and other documents offered therewith as contained in Offer No. 10 of each defendant.

12. The court erred in excluding the certificate of purchase of W. S. Rosecrans for the land in question in each case of defendants respectively, as offered in Offer No. 12.

76 13. The court erred in excluding the evidence of the selection of said land as contained in Offer No. 14 of defendants.

14. The court erred in excluding the evidence of witnesses Rhodes, Main, Teed, as contained in Offer No. 15, defendant.

Defendant here assigns and specifies the errors of law committed by the court, which were duly excepted to in the case of J. Lagier.

The first seven errors as assigned in the case of E. Root.

8. The court erred in excluding the evidence offered of the description, or pretended description, of lands in question and affidavit endorsed thereon, filed by Henry Davis in the county recorder's office of Los Angeles county.

9. The court erred in excluding the application of Henry Davis to purchase said lands from the State, as contained in Offer 8 and papers accompanying said application and endorsement thereon.

10. The court erred in excluding the application of W. S. Rosecrans for said lands, as contained in Offer 9 of defendant.

11. The court erred in excluding the map of the Rancho San Jacinto Nuevo and other documents offered therewith, as contained in Offer No. 10 of defendant.

12. The court erred in excluding the certificate of purchase
77 issued to W. S. Rosecrans for the land in question, as contained in Offer No. 12, defendant.

13. The court erred in excluding the evidence of the selection of said land, as contained in Offer No. 14.

14. The court erred in excluding the evidence of witnesses Rhodes, Main, and Teed, as contained in Offer No. 15, defendant.

In the case of James Root, defendant, here assigns as errors of law committed by the court, which were duly excepted to by the defendant.

The first seven errors as assigned in the case of E. Root.

8. The court erred in excluding the evidence offered of the description or pretended description of lands in question and affidavit endorsed thereon, filed by James A. Wilson in the county recorder's office of Los Angeles county.

9. The court erred in excluding the application of said Wilson to purchase said lands from the State, as contained in Offer 8 and papers accompanying said application and endorsements thereon.

10. The court erred in excluding the application of W. S. Rosecrans for said land, as contained in Offer 9 of the defendant.

78 11. The court erred in excluding the map of the Rancho San Juan Cajon de Santa Ana and other documents offered therewith, as contained in Offer No. 10 of defendant.

12. The court erred in excluding the certificate of purchase issued to W. S. Rosecrans for the land in question.

13. The court erred in excluding the evidence of the selection of said land, as contained in Offer No. 14.

14. The court erred in excluding the evidence of witnesses Rhodes, Main, and Teed, as contained in Offer No. 15, defendant.

In the case of E. Bien, defendant here assigns as errors of law committed by the court, which were duly excepted to by the defendant.

The first seven errors as assigned in the case of E. Root.

8. The court erred in excluding the evidence offered of the description or pretended description of lands in question and affidavit endorsed thereon, filed by Caleb Farris in the county recorder's office of Los Angeles county.

9. The court erred in excluding the application of said Farris to purchase said lands from the State, as contained in Offer 8 and papers accompanying said application and endorsements thereon.

79 10. The court erred in excluding the application of W. S. Rosecrans for said land, as contained in Offer 9 of the defendant.

12. The court erred in excluding the certificate of purchase issued to W. S. Rosecrans for the land in question.

13. The court erred in excluding the evidence of the selection of said land as contained in Offer No. 14.

14. The court erred in excluding the evidence of witnesses Rhodes, Main, and Teed, as contained in Offer No. 15, defendant.

WILL. D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendants.

The foregoing statement on motion for new trial is certified to be correct, and is allowed and signed accordingly.

J. D. HINES,
Superior Judge, Presiding.

Minutes of the Court. Order Denying Motion for a New Trial, June 16, 1881.

Title of Court and Cause.

80 Statement on motion for new trial as to defendants, E. Root, Jean Lagier, D. Rodriguez, J. A. Rodriguez, and E. Bien allowed and signed. Motion for new trial submitted, and by the court denied. Appeal bond for rents and profits fixed at $200.

Notice of Appeal.

Title of Court and Cause.

You will please take notice that E. Root, James Root, Jean Lagier, D. Rodriguez, J. A. Rodriguez, and E. Bien, defendants in the above-entitled action, each acting for himself, and not one for the other, hereby appeals to the supreme court of this State from the judgments rendered against him, to wit:

E. Root appeals from the judgment rendered against him.

James Root appeals from the judgment rendered against him.

D. Rodriguez appeals from the judgment rendered against him.

J. A. Rodriguez appeals from the judgment rendered against him.

J. Lagier appeals from the judgment rendered against him.

81 E. Bien appeals from the judgment rendered against him.

Said judgments therein made and entered in the said superior court, on the 14th day of May, 1881, in favor of the said plaintiff in said action, and against said defendants respectively, and from the whole thereof; and also each of said defendants likewise appeals from the order of the court in said action denying said defendants' motion for a new trial as to each and all of them, made and entered in said court on the 16th day of June, 1881.

Dated this 25th day of June, 1881.

WILL. D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendants.

To the clerk of said superior court and
J. D. BICKNELL,
Attorney for Plaintiff.

Filed June 25th, 1881.

A. W. POTTS, *Clerk*,
By GRIFFIN JOHNSTON,
Deputy Clerk.

Service and receipt of a copy hereof admitted after filing this 25th day of June, 1881.

J. D. BICKNELL,
Attorney for Plaintiff.

82 *Stipulation.*

In the Superior Court of Los Angeles County, State of California.

M. J. O'CONNOR, Plaintiff, *against* B. F. GOOD *et al.*, Defendants.

It is hereby stipulated in the above-entitled cause that the foregoing transcript on appeal contains a full, true, and correct copy of the following papers on file in this cause, to wit: Complaint, separate answer of E. Root, findings and judgment as to defendant E. Root, statement on motion for new trial, order denying motion for new trial, and notice of appeal as to defendants. Also, a true, correct, and sufficient summary and statement of the answers of the several defendants herein other than defendant E. Root, and a true, correct, and sufficient summary and statement of the findings and judgment and notices of appeal as to said other defendants. It is further stipulated that the foregoing pages shall constitute the transcript in said cause on appeal to the Supreme Court and be of the same force and effect as to the defendants, James Root, Jean
83 Lagier, J. A. Rodriguez, D. Rodriguez, and E. Bien, as if their and each of their separate answers and the findings and judgments and notices of appeal, etc., as to them and each of them, were set out in full in said transcript, and no advantage shall be taken on appeal by reason of said summary and abridgment of said papers. Also, that a sufficient undertaking on appeal in due form of law staying all further proceedings in said court upon the judgment and order appealed from has been properly given and filed in said cause within the time and in the manner prescribed by law.

July 22, 1881.

JOHN D. BICKNELL,
Attorney for Plaintiff.
WILL. D. GOULD AND
JAMES H. BLANCHARD,
Attorneys for Defendants.

84 Service accepted by copy, this 30th day of July, 1881.

JOHN D. BICKNELL,
Attorney for Respondent.

Endorsed: Filed Aug. 1st, 1881. F. W. Gross, clerk, by John O. Wheeler, deputy.

85 *Judgment.*

In the Supreme Court of the State of California, June 29th, 1882.

In Bank.

M. J. O'Connor, Respondent, *vs.* B. F. Good *et al.*, Appellants. } No. 7966.

On appeal from the superior court in and for the county of Los Angeles.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by the court, Myrick, J., dissenting.

Whereupon it is ordered and decreed by the court that the judgment of the superior court in and for the county of Los Angeles in the above-entitled cause be, and the same is hereby, affirmed, with costs.

86 *Opinion. Filed June 29, 1882.*

In Bank.

O'Connor *vs.* Good and O'Connor *vs.* Hazard. } Nos. 7965 and 7066.

The Court, Myrick, J., dissenting:

The facts, as they appear from the records of these cases, are identical with those in the record of the case of O'Connor *vs.* Frasher *et al.*, decided January 4, 1881, and upon the authority of that case the judgments in these cases are affirmed.

87 *Bond.*

In the Supreme Court of the United States.

B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, J. McClure, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S. Gaines, E. Davis, J. R. Hinkle, G. Z. Morey, C. Davis, J. H. Bland, H. Khuhn, A. W. Eames, S. E. Watson, J. C. Tucker, H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Tarris, T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slottersbeck, J. Officialdeguy, V. Fridolin, Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, J. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lille F. Burlingame, H. S. Dickey, Jose Antoine Rodriguez, Dolores Rodriguez, Jean Logier, T. M. Weed, E. Bean, Dennis McCauly, Plaintiffs in Error,

vs.

M. J. O'Connor, Defendant in Error.

88 Know all men by these presents, that we, Melvin S. Fay, P. Clos, Jno. H. Seymour, and L. Lichtenberger, of Los An-

geles, California, are held and firmly bound unto M. J. O'Connor, said defendant in error herein, in the sum of one thousand (1,000) dollars lawful money of the United States of America, to be paid to said M. J. O'Connor, his executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this sixth day of July, A. D. 1882.

Whereas the above-named B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, J. McClure, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S. Gaines, E. Davis, J. R. Hinkle, G. B. Morey, C. Davis, J. H. Bland, H. Khuhn, A. W. Eames, S. E. Watson, J. C. Tucker, H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Farris, T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slotterbeck, J. Officialdeguy, V. Fridolin, Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, J. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lillie
89 F. Burlingame, H. S. Dickey, Jose Antoine Rodriguez, Dolores Rodriguez, Jean Logier, T. M. Weed, E. Bean, and Dennis McCauly, plaintiffs in error herein, have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the cause entitled M. J. O'Connor, plaintiff and respondent, against B. F. Good *et al.* (No. 7966), by the supreme court of the State of California:

Now, therefore, the condition of this obligation is such that if the above-named B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, J. McClure, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S. Gaines, E. Davis, J. R. Hinkle, G. Z. Morey, C. Davis, J. H. Bland, H. Kehuhn, A. W. Eames, S. E. Watson, J. C. Tucker, H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Farris, T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slotterbeck, J. Officialdeguy, V. Fredolin, Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, J. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lillie F. Burlingame, H. S. Dickey, Jose Antonio Rodriguez, Dolorez Rodriguez, Jean Logier, T. M. Weed, E. Bean, and Denis McCauly shall
90 prosecute their said writ of error to effect and answer all rents, costs, and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

MELVIN S. FAY. [SEAL.]
P. CLOS. [SEAL.]
JNO. H. SEYMOUR. [SEAL.]
L. LICHTENBERGER. [SEAL.]

Signed, sealed, and delivered in the presence of—
WILL D. GOULD.

UNITED STATES OF AMERICA, } ss:
State of California, }

Melvin S. Fay, P. Clos, Jno. H. Seymour, and L. Lichtenberger, of Los Angeles, California, being first duly sworn, each for himself deposes and says: That he is a resident and freeholder in said State of California, and is worth the sum of one thousand (1,000.00) dollars, exclusive of property exempt from execution, over and above all his just debts and liabilities.

MELVIN S. FAY. [SEAL.]
P. CLOS. [SEAL.]
JNO. H. SEYMOUR. [SEAL.]
L. LICHTENBERGER. [SEAL.]

Subscribed and sworn to before me, this 8th day of July, A. D. 1882.

[SEAL.] FRANK W. GROSS,
Clerk Supreme Court Cala.,
Per JOHN O. WHEELER, *Deputy.*

91 The amount of the bond in the within-mentioned case is hereby fixed at one thousand ($1,000.00) dollars.

July 6th, 1882.

ROB'T F. MORRISON,
Chief Justice of California.

[Endorsed:] Filed Aug. 8, 1882. F. W. Gross, clerk, per John O. Wheeler, dep't.

Approved by me Aug. 8, 1882.

R. F. MORRISON,
Chief Justice.

92 *Writ of Error.*

UNITED STATES OF AEERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said supreme court before you, between B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, J. McClure, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S. Gaines, E. Davis, J. R. Hinkle, G. Z. Morey, C. Davis, J. H. Bland, H. Khuhn, A. W. Eames, S. E. Watson, J. C. Tucker,
H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Farris,
93 T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slotterbeck, J. Officialdeguy, V. Fridolin, Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, J. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lille F. Burlin-

game, H. S. Dickey, Jose Antoino Rodriguez, Dolores Rodriguez, Jean Logier, T. M. Weed, E. Bean, Denis McCauly, plaintiffs in error, and M. J. O'Connor, defendant in error, a manifest error hath happened,
to the great damage of the said plaintiffs in error, as by their
94 complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court to be there and then held, that the record and proceedings aforesaid be- inspected,
95 the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of July, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[SEAL.] L. S. B. SAWYER,
Clerk of U. S. Circuit Court, District of California,
By J. F. O'BEIRNE,
Deputy Clerk.

The above writ of error is hereby allowed.

ROB'T F. MORRISON,
Chief Justice of California.

95½ [Endorsed:] 7966. United States Supreme Court. B. F. Good *et al.*, plaintiffs in error, *vs.* M. J. O'Connor, defendant in error. Writ of error. Filed July 6th, 1882. F. W. Gross, clerk, by J. B. Martin, dep'ty.

96 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To M. J. O'Connor, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, District of Columbia, on the second Monday of October, A. D. 1882, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, J. McClure, J. Whistler, R. G. Reed, M. Kenealy, J. W. Davis, J. G. Cuddy, A. Haines, J. Bartley, S.
97 Gaines, E. Davis, J. R. Hinkle, G. Z. Morey, C. Davis, J. H. Bland, H. Khuhn, A. W. Eames, S. E. Watson, J. C. Tucker, H. C. Graham, J. M. Vickers, T. E. Gray, J. Slert, W. R. Farris, T. J. Short, W. S. Manning, J. Root, L. J. Thompson, J. S. Willett, S. W. Hiller, J. G. Seamans, S. Reese, William Smith, A. S. Addis, W. J. A. Smith, E. Root, H. Slotterbeck, J. Officialdeguy, V. Fridolin,

Jean Domecg, W. H. Moore, C. E. J. White, F. A. Alvarez, J. F. Hawk, C. H. Arnold, R. Thompson, B. Bigue, C. Rogi, J. G. Salsbury, J. S. Buckley, James Sutton, N. W. Bartlett, J. Tilley, J. T. Stewart, C. Schrover, J. Sanders, Lille F. Burlingame, H. S. Dickey, Jose Antonio Rodriguez, Dolores Rodriguez, Jean Logier, T. M. Weed, E. Bean, Denis McCauly, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why
98 the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert F. Morrison, chief justice of the supreme court of the State of California, this 5th day of July, A. D. 1882, and of the Independence of the United States the one hundred and seventh.

ROB'T F. MORRISON,
Chief Justice of California.

[SEAL.] Attest: F. W. GROSS,
Clerk of Supreme Court of California,
By J. B. MARTIN, *Deputy.*

Received copy of the foregoing citation, this 8th day of July, A. D. 1882.

JOHN D. BICKNELL,
Attorney for Defendant in Error.

[Endorsed:] United States Supreme Court. B. F. Good *et al.*, plaintiffs in error, *vs.* M. J. O'Connor, defendant in error. Citation. Filed July 8th, 1882. F. W. Gross, cl'k, per Wm. S. Wheeler, dep'y.

99 *Clerk's Certificate.*

In the Supreme Court of the State of California.

B. F. Good *et al.*, Plaintiff- in Error,
vs.
M. J. O'Connor, Defendant in Error.

I, Frank W. Gross, clerk of the supreme court of the State of California, do hereby certify that the foregoing ninety-six pages, numbered from 1 to 96, both numbers inclusive, contain a full, true, and correct transcript of the proceedings in the cause above entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of the said supreme court, this 29th day of August, A. D. 1882.

[SEAL.] FRANK W. GROSS, *Clerk,*
By C. HARLAN, *Deputy.*

Endorsed on cover: California sup. court. No. 312. B. F. Good, C. R. Clark, J. E. Whistler, D. Murphy, *et al.*, plaintiffs in error, *vs.* M. J. O'Connor. Filed 7th October, 1882.